

might not fit neatly into the White House messaging plan since it has been widely reported that a major part—a major part—of the Kerry-Lieberman bill was essentially written by BP.

Let me say that again: A major part of the Kerry-Lieberman bill was written by BP. This is clearly an inconvenient fact. An administration that seems to spend most of its time coming up with ways to show how angry it is with BP is pushing a proposal that BP actually helped to write. I can't understand, and I don't think the American people will understand, why the majority believes it makes sense to respond to the BP oilspill by imposing a gas tax increase on the American people that was advocated by BP.

I think the American people want us to work together to address the disaster in the gulf, not exploit it—not exploit it—for partisan political purposes. The oilspill trust fund ought to be used to clean up oilspills. The oilspill trust fund ought to be used to clean up oilspills. This is one crisis Americans will not let Democrats exploit for their policy purposes.

Mr. President, I yield the floor.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### AMERICAN JOBS AND CLOSING TAX LOOPHOLES ACT OF 2010

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of the House message to accompany H.R. 4213, which the clerk will report.

The legislative clerk read as follows:

Motion to concur in the House amendment to the Senate amendment to H.R. 4213, an act to amend the Internal Revenue Code of 1986 to extend certain expiring provisions, and for other purposes.

Pending:

Baucus motion to concur in the amendment of the House to the amendment of the Senate to the bill, with Baucus amendment No. 4301 (to the amendment of the House to the amendment of the Senate to the bill), in the nature of a substitute;

Sessions/McCaskill amendment No. 4303 (to amendment No. 4301), to establish 3-year discretionary spending caps;

Cardin amendment No. 4304 (to amendment No. 4301), to provide for the extension of dependent coverage under the Federal Employees Health Benefits Program;

Franken amendment No. 4311 (to amendment No. 4301), to establish the Office of the Homeowner Advocate for purposes of addressing problems with the Home Affordable Modification Program; and

Cornyn/Kyl amendment No. 4302 (to amendment No. 4301), to increase transparency regarding debt instruments of the United States held by foreign governments, to assess the risks to the United States of such holdings.

The ACTING PRESIDENT pro tempore. The Senator from Montana.

Mr. BAUCUS. Mr. President, in a few moments I will speak on the pending

business before the Senate—the American Jobs and Closing Tax Loopholes Act—but before I do, I would like to refer to the comments of the Republican leader, as well as the statement of the Senator from Louisiana that he gave yesterday.

For several months now, Americans have witnessed a massive oilspill in the Gulf of Mexico, Americans have seen the sweeping environmental damage, and Americans have seen the dramatic economic effects. It is something that is overwhelming, it is appalling, and it is incredible how much damage is being created by the BP gulf oilspill. I am sure to the average observer there might seem no better time than now to ask oil companies to contribute more to shoulder the burden of the oilspill. Actually, they have caused the spill—at least one company has—and they should bear the burden.

This, then, would seem to be an appropriate time to raise the oilspill liability tax. The oilspill liability tax is pretty small. It is 8 cents a barrel. That is all it is currently. One would have to come up with a pretty creative argument if one wanted to protect big oil companies from this fee.

Well, the Senator from Louisiana, and just now the Republican leader, have done that. They have come up with a pretty creative argument to protect the oil companies. The Senator from Louisiana, for example, has returned to the last refuge of bean counters, and he has cried double counting. The double counting argument seems to be a favorite among bean counters, Mr. President. It seems to be the argument one falls back on when one cannot argue the substance and one just wants to muddy the waters. In reality, the funds collected by raising the oilspill liability tax will strengthen the Oil Spill Liability Trust Fund. That is simple arithmetic. But opponents of raising the tax on big oil companies want to make it less attractive for doing so. They want to make it so that the funds collected by raising taxes on big oil do not count in the Federal budget. That way it will be less effective and less attractive to raise taxes on big oil.

So don't be misled by the green eyeshades talk. Don't be misled by the bogus charges of double counting. Don't buy into the arguments of those who want to protect big oil. I urge my colleagues that when we get to it later today to vote against the Vitter amendment and to reject the arguments we have been hearing today that raising the per-barrel tax for funds which go into the oilspill liability fund is somehow double counting because, clearly, that money goes into the trust fund, and funds from that trust fund are then used to pay for the cleanup and some damage that has occurred and also counts toward reducing the Federal deficit because it is extra money that goes to government debt and, therefore, is money which is not doubled counted.

I urge my colleagues to reject those arguments.

Mr. DURBIN. Will the Senator from Montana yield for a question?

Mr. BAUCUS. I will yield to the Senator.

Mr. DURBIN. I listened to the statements made today by the Republican leader about the increase in this fee that is to be paid into the Oil Spill Liability Trust Fund. I would like to ask the chairman of the Finance Committee, currently, the fee is 8 cents a barrel?

Mr. BAUCUS. That is correct.

Mr. DURBIN. And the price of a barrel of oil, as of this morning's Wall Street Journal, is \$71.99 a barrel?

Mr. BAUCUS. That is correct.

Mr. DURBIN. So this is a small, tiny fraction—one-tenth—

Mr. BAUCUS. Of the current fee.

Mr. DURBIN. Of the current fee. One-tenth of 1 percent as best I can calculate it.

Mr. BAUCUS. That is true.

Mr. DURBIN. That is being paid by oil companies into a fund so that if there would be a spill and the oil company responsible couldn't pay for it, they would have at least accumulated enough money to protect the taxpayers—

Mr. BAUCUS. That is correct.

Mr. DURBIN. From this liability.

Mr. BAUCUS. That is correct. I might also say this fund was created in the wake of the Exxon Valdez spill.

Mr. DURBIN. Twenty-one years ago. I might also ask the chairman of the Finance Committee, it is my understanding that the total value of the current Oil Spill Liability Trust Fund is somewhere in the range of \$1.5 billion?

Mr. BAUCUS. I think that is the amount. I am not certain, but it is about that.

Mr. DURBIN. So the effort in this bill is to increase that per-barrel tax paid by oil companies for this oilspill liability fund to—

Mr. BAUCUS. Forty-one cents.

Mr. DURBIN. Forty-one cents. So 41 cents would represent, as I calculate it, one-half of 1 percent of the current cost of a barrel of oil.

Mr. BAUCUS. The current oil priced at \$71 a barrel.

Mr. DURBIN. Right. So the argument from the other side is that even if we accumulated this money and put it into this fund for cleaning up spills, we shouldn't count it as additional money being held by the Federal Government at the same time; is that correct?

Mr. BAUCUS. That is correct.

Mr. DURBIN. And if we fail to count it as an additional source of revenue being held by the Federal Government, is it not true that it would be subject to a budget point of order, which would then require 60 votes, and that would allow the oil companies to find 41 friends on the Senate floor—and I think I know where they will start looking—to defeat this effort to create this tax?